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IN THE

# Supreme Court of the United States

October Term, 1982

No. 82-[redacted]1253

HERMAN S. SOLEM,
WARDEN, SOUTH DAKOTA STATE PENITENTIARY;
and MARK V. MEIERHENRY,
ATTORNEY GENERAL, STATE OF SOUTH DAKOTA,
*Petitioners,*

v.

JOHN BARTLETT,
*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

## BRIEF FOR AMICUS CURIAE STATE OF MINNESOTA IN SUPPORT OF PETITIONERS SOLEM, ET AL.

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## BRIEF FOR AMICUS CURIAE STATE OF MINNESOTA IN SUPPORT OF PETITIONERS SOLEM, ET AL.

## INTEREST OF AMICUS CURIAE

The State of Minnesota has a historic and continuing interest in issues relating to the disestablishment of Indian reservations. There are eleven major Indian reservations in the state which are recognized by the United States Department of Interior. These reservations encompass approximately 2.5 million acres—about 4.6% of the total area of the state.

Many of Minnesota's reservations were subject in the late 1800's and early 1900's to surplus land acts which opened up parts of reservations to non-Indian settlement. These surplus land acts were similar to the statutes involved in the present case as well as to those construed in *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977) and *DeCoteau v. District County Court*, 420 U.S. 425 (1975). Minnesota submits this brief because of the potential impacts which a decision in this case might have on disestablishment issues within Minnesota borders.

## SUMMARY OF ARGUMENT

The decision of the court of appeals threatens to recreate the uncertainties and ambiguities that existed prior to the cases of *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977) and *DeCoteau v. District County Court*, 420 U.S. 425 (1975). States containing reservations affected by surplus land acts need clear rules from the Supreme Court for analyzing disestablishment issues. The Court, in a comprehensive opinion, should reaffirm the reasoning of the *Rosebud* and *DeCoteau* decisions and where necessary expand such reasoning in order to clarify any remaining questions about how to analyze the effects of surplus land acts.

## ARGUMENT

The State of Minnesota already has been involved in extensive litigation over the question of whether surplus land acts diminished or disestablished reservations. *White Earth Band of Chippewa Indians v. Alexander*, 683 F.2d 1129 (8th Cir. 1982), *cert. denied*, —— U.S. ——, 103 S.Ct. 489 (1982); *Red Lake Band of Chippewa Indians v. State of Minnesota*, 614 F.2d 1161 (8th Cir. 1980), *cert. denied*, 449 U.S. 905 (1980); *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 (D. Minn. 1971); *State v. Clark*, 282 N.W.2d 902 (Minn. 1979), *cert. denied*, 445 U.S. 904 (1980). There continue to be disputes within the state over the effects of past federal surplus land statutes on reservations not involved in the above lawsuits.

The purpose of this brief primarily is to emphasize to the Court that states like Minnesota need clear rules and guidelines for addressing disestablishment or diminishment issues. It is extremely important for states to know whether land within original reservation borders did or did not remain Indian country after the United States Congress enacted various surplus land statutes in the late nineteenth and early twentieth centuries. Serious jurisdictional consequences result from the interpretation of these statutes. If the surplus land acts did not affect reservation status, states are deprived of significant jurisdiction over the "opened" territory. Perhaps more important, non-Indians, whom the federal government initially urged to move onto reservations, may find themselves subject to the jurisdiction of Indian tribes rather than to the jurisdiction of the states of which they are citizens.

Minnesota had viewed the cases of *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977) and *DeCoteau v. District County Court*, 420 U.S. 425 (1975) as going a long way toward clari-

fying many of the rules for determining disestablishment issues. However, the Court of Appeals for the Eighth Circuit in the present case has put much in doubt again.[1] This has put states, especially those within the eighth circuit, in a very difficult position. Once again we are confronting ambiguous or conflicting rules on very important questions. All in all, the *Bartlett* decision being appealed here seems to be a step backward.

The State of Minnesota urges the Court to address firmly and comprehensively the effects that surplus land acts had on reservations. This issue should not have to be litigated and appealed in every case, but that is still what is happening. The *Rosebud* and *DeCoteau* decisions substantially improved the framework for analyzing issues of disestablishment. Now the Court has the opportunity not only to reaffirm the principles of those two cases but also to give even clearer directions to states and to lower courts. The Court should make use of this opportunity. Enough jurisdictional conflicts and litigation involving Indian reservations already exist without continuing to add disestablishment issues to the list. It will be a benefit to everyone if the Court follows and further refines the reasoning set out in the *Rosebud* and *DeCoteau* decisions of 1977 and 1975.

This *amicus* brief will go no further into the merits of the *Bartlett* decision of the court of appeals. The details of the case are most comprehensively discussed by the petitioners and the other *amici curiae*. Minnesota's desire with this brief chiefly is to emphasize to the Court the necessity of a clear and comprehensive opinion consistent with the recent decisions in *Rosebud* and *DeCoteau*.

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[1] The Eighth Circuit has continued to create ambiguities over the *Rosebud* and *DeCoteau* rules in its recent decision in *Lower Brule Sioux Tribe v. South Dakota*, No. 82-1635, slip op. (June 27, 1983).

## CONCLUSION

For the reasons discussed in this brief as well as the briefs of the petitioners and other *amici curiae*, the judgment of the court of appeals in this case should be reversed.

Dated: August 2, 1983.

Respectfully submitted,

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